

Chapter 4 – Uniform Relocation Act & Section 104(d) Requirements

This chapter provides guidance on how to handle permanent and temporary displacement of residents as a result of the HOME or CDBG assisted development. URA and Section 104(d) can be extremely costly to an award recipient if not done correctly. The information in this chapter is presented based on the type of activity you are undertaking.

According to Title I of the Housing and Community Development Act of 1974, as amended, and Title II of the National Affordable Housing Act of 1990, as amended, "Each award recipient [participating jurisdiction] shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this title..." as required under the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended, and Federal implementing regulations at 49 CFR Part 24 and the requirements of **Section 104(d) of Title I of the Housing and Community Development Act of 1974**, as amended.

Owner-occupied Rehabilitation

Participation in the owner-occupied rehabilitation program is voluntarily, so participants are *not* eligible for permanent relocation assistance. Award recipients are required to provide *temporary* relocation assistance in the event that a unit becomes temporarily unlivable during rehabilitation.

During the initial eligibility review for the owner-occupied rehabilitation program, award recipients should inform participants that relocation might occur. Award recipients can provide relocation in the form of paying for hotels, housing participants in another unit, paying for meals, etc. Owner-occupied rehabilitation participants are not required to receive relocation advisory notices.

Rental Rehabilitation

If you use award funds to do rehabilitation on a building that has occupants, you will be responsible for providing permanent and/or temporary relocation assistance depending on the circumstances.

Notices should be issued **as soon as feasible** after a specific property has been identified for CDBG and/or HOME assistance. Handbook 1378 (available in the forms section at www.hudclips.org) defines the point of "initiation of negotiations" for HUD programs.

Notices must be sent to the following:

- Seller
- Tenants who currently reside in the units
- Tenants who move in after application
- Tenants who will remain in the units
- Tenants who will be displaced

Refer to Part IV A for the listing of the required notices.

Acquisition

If award funds are used to acquire a property for the purpose of becoming CDBG or HOME housing, the award recipient is responsible for ensuring compliance with all of the relocation statutes.

The first step is to send a notice to the seller. Notices should be issued **as soon as feasible** after a specific property has been identified for CDBG and/or HOME assistance.

Owner occupants involved in a voluntary transaction (willing buyer and willing seller) are *ineligible* for relocation assistance. However, any *tenants* residing in the building are entitled to relocation. Please refer to the Rental Rehabilitation section for guidance.

Notices and Other Advisory Services

Virtually EVERYONE needs a notice of some kind. All occupants are entitled to timely notices explaining whether or not they will be displaced.

- ◇ Occupants to be displaced must be informed of their eligibility for relocation assistance and the nature of the assistance.
- ◇ Occupants not to be displaced must be informed of the terms and conditions under which they may occupy the property upon completion of the project.

Notices should be issued **as soon as feasible** after a specific property has been identified for CDBG and/or HOME assistance.

Different notices serve different purposes and must be tailored both to:

- ◇ The specific project circumstances, and
- ◇ The individual circumstances of the residents.

Combining notices is OK, **if** the appropriate information is provided in a timely manner.

Either the award recipient or the property owner may issue notices. However, the award recipient is **ultimately** responsible and must assure that timely and correct notices are given. IHFA recommends the award recipients issue notices.

Notices must be personally served or sent by certified or registered first-class mail, return receipt requested. If personally served, the resident must sign a receipt acknowledging delivery.

Failure to provide correct and timely notices can be one of the most expensive mistakes made on your housing development.

A. Required Notices

1. General Information Notice (Exhibits B & C)

- ◇ **All occupants must be given a General Information Notice.** Different versions are required for those persons who will and will not be displaced.
- ◇ The notice must be provided as soon as feasible after the submission of an application to IHFA, or as soon as a specific property has been identified for CDBG and/or HOME assistance.
- ◇ The notice must explain that the CDBG and/or HOME assisted development has been proposed and caution the resident not to move prematurely.
- ◇ It informs the resident of the terms for continued occupancy if the resident will not be displaced or of the assistance available if the person will be displaced.
- ◇ If displacement is possible, the notice should enclose additional information about available relocation assistance (e.g., HUD Booklet 1042-CPD, *Relocation Assistance to Tenants Displaced From Their Homes.*)

2. Notice to Tenants Moving In After Application

- ◇ This notice must be issued to each prospective tenant BEFORE the tenant agrees to move into the development.
- ◇ It explains that the development has been proposed and informs residents that they may be displaced or sustain a rent increase as a result and that they will NOT be entitled to relocation assistance in either event.
- ◇ Failure to issue this notice can be very costly. The award recipient may incur unnecessary relocation liability for each resident who moves in after the application for CDBG and/or HOME assistance and is not given this notice.

3. Notice of Nondisplacement (Exhibit D)

- ◇ For acquisition and/or residential rehabilitation projects this notice is issued to residents who will remain in the project after its completion.
- ◇ It is issued at the time of the execution of the agreement for acquisition and/or rehabilitation and contains a specific offer of a suitable, affordable unit in the project.

4. Temporary Relocation Notice

- ◇ Residents who are not required to move permanently may be required to move temporarily, if all conditions of the move are "reasonable".

- ◇ Those to be temporarily relocated must receive "reasonable" advance written notice of the location, terms and conditions of the temporary move and of their right to reimbursement of all reasonable out-of-pocket expenses.

5. Notice of Eligibility for Relocation Assistance (Exhibits E, F, G & H)

- ◇ For acquisition and/or residential rehabilitation projects, this notice is issued to residents who will be displaced.
- ◇ The notice is issued at the time of the execution of the agreement for acquisition and/or rehabilitation and contains a commitment for relocation assistance including:
 - Address of at least one comparable replacement unit and other appropriate (but not necessarily comparable) referral housing units.
 - A specified amount for a replacement housing payment and moving expense.
- ◇ Because the comparable rents set an upper limit for assistance, failure to provide information about available, comparable units may result in a requirement to pay excessive relocation costs.
- ◇ For a family who can be offered a decent, safe, and sanitary unit in the project but not an affordable one, the notice may offer the family the opportunity to waive relocation assistance and remain in the development.
- ◇ The notice should include the information contained in HUD Booklet 1042-CPD *Relocation Assistance to Tenants Displaced From Their Homes* or Booklet 1044-CPD *Relocation Assistance to Displaced Homeowners*.

6. 90 Day (and 30 Day) Notices

- ◇ Each lawful occupant to be displaced must receive at least 90 days written advance notice before being required to move.
- ◇ The notice cannot be given before the person is issued a Notice of Eligibility for Relocation Assistance **OR** before being notified of the availability of a comparable replacement dwelling.
- ◇ The notice must specify the date by which the property must be vacated, or if the date is unknown, it must indicate the earliest date that the occupant may be required to move.
- ◇ If no date is specified in the 90-Day Notice, the occupants must be informed that they will receive at least 30 days advance written notice of the specific date of the move.

B. Information and Counseling

1. All residents must be kept informed of development activities and scheduling.
2. Information and counseling should also include:
 - ◇ Referrals to other available assistance and human services (e.g., health services, public assistance, child care)
 - ◇ Information about Federal, State, and local housing programs and how to apply for them.
 - ◇ Information about the household's rights under the Fair Housing Act.
 - ◇ For those who are displaced: information, to the extent possible, about replacement housing opportunities that may promote fair housing and moves to neighborhoods outside areas of racial concentration.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) applies to:

URA applies to:

- ◇ Displacement that results from acquisition, demolition, or rehabilitation for HUD-assisted developments carried out by public agencies, nonprofit organizations, private developers, or others.
- ◇ Real Property Acquisition for HUD-assisted developments (whether publicly or privately undertaken).
- ◇ URA requirements apply to all CDBG and HOME assisted projects regardless of whether federal, local, or private funds are paying for the specific development activity that is causing displacement to occur.

A. URA Assistance to Displaced Households

Assistance must be provided to displaced persons who **leave** the development. Displaced households must receive:

- ◇ Appropriate notices and other advisory services to assure they are fully informed of their rights, make informed decisions, and receive referrals to appropriate services that may be needed.
- ◇ Replacement housing including the offer of a comparable replacement dwelling and, if necessary, financial assistance to make the unit affordable. (Financial assistance may be in the form of a Replacement Housing Payment or tenant-based rental assistance, such as Section 8 Certificates and Vouchers). There is no income cut-off for eligibility for relocation assistance. Anyone who is displaced may be entitled to URA assistance.

- ◇ Moving and related expenses to help cover costs of the move. The displaced person has the option of choosing:
 - a payment for actual, out-of-pocket, reasonable moving and related expenses; or
 - a fixed moving expense allowance based on a Department of Transportation (DOT) schedule (available from IHFA).

B. URA Assistance to Remaining Households

Assistance must also be provided to those persons who are expected to **remain** in the development. Remaining households receive:

- ◇ Appropriate notices and other advisory services to assure that they are fully informed of their rights, make informed decision, and receive referrals to appropriate related services that may be needed.
- ◇ Suitable housing - The family must be offered a unit within the development that is decent, safe, and sanitary and appropriate to the household's size.
- ◇ Affordable housing - If a household's rent increases as a direct result of a federally assisted activity to an amount that is more than the household can afford, the household is considered "economically displaced." The award recipient must treat this household like any other displaced household by issuing a "Notice of Eligibility" and providing relocation assistance.
- ◇ Temporary relocation assistance including moving and related expenses to cover the cost of any temporary move (e.g., while the unit is being rehabilitated).
- ◇ Moving and related expenses to help cover the cost of any permanent move to another unit in the development.

C. URA Requirements for Acquisition

- ◇ Activities that involve acquisition require certain award recipient actions whether the acquisitions are voluntary or involuntary.
- ◇ Acquisition rules cover:
 - fee simple title purchases;
 - acquisition of properties subject to a life estate;
 - leasing, where options allow for extensions of 50 years or more; and
 - purchase of permanent, but not temporary, easements.
- ◇ Because voluntary sales are negotiated without the threat of eminent domain or condemnation, there are fewer requirements associated with voluntary acquisitions.

- ◇ The URA has a very specific definition of what constitutes a voluntary transaction. Thus, it is vitally important that award recipients understand whether each transaction undertaken is voluntary or involuntary.
- ◇ Acquisition rules apply whether the award recipient directly acquires the property or provides funding to another entity (such as a nonprofit organization) that acquires a property.
- ◇ URA requirements apply to the greatest extent practicable under State law.
- ◇ Section 104(d) regulations do not apply to acquisition.

1. VOLUNTARY ACQUISITION TRANSACTIONS

In general, URA recognizes these potential types of voluntary transactions:

a. Voluntary Acquisition by Award Recipients with the Power of Eminent Domain

- ◇ To be considered a voluntary acquisition, the property may not be part of a planned or designated project area where substantially all property within the area is to be purchased within a specific time frame.
- ◇ If the award recipient requires a specific site for the program or activity it is planning to undertake, the sale cannot be considered voluntary. The search for alternative sites may be limited to one general geographic area, but all owners within the same geographic area must be treated similarly.
- ◇ When someone other than the award recipient (such as a private developer) is authorized to act on its behalf and the award recipient will undertake the purchase through eminent domain if the third party fails to accomplish the acquisition, the acquisition must be treated as an involuntary acquisition.
- ◇ The award recipient/recipient must notify the owner in writing that it will not use its power of eminent domain to acquire the property.
- ◇ The award recipient must inform the owner of the fair market value of the property in question.
 - This notice must be in writing and done before a sales contract is signed.
 - No formal appraisal is required. However, a person with knowledge of the local market must do the estimate of market value and the award recipient's files must include an explanation for the estimate. The most common practice of award recipients (to protect themselves) is to go ahead and get an appraisal.

b. Voluntary Acquisition by Award Recipients or Subrecipients with No Power of Eminent Domain (Exhibit I)

- ◇ A sale to an award recipient (or subrecipient) without the power of eminent domain can be considered voluntary if the award recipient (or subrecipient) notifies the seller (1) that it does not have the power of eminent domain; (2) of its determination of the market value estimate for the property; and (3) that the seller is not eligible for any form of relocation assistance.
- ◇ When feasible, the above noted information must be provided prior to the purchase offer.
- ◇ When it is infeasible to deliver the notice before the purchase offer, owners must be allowed to withdraw from the purchase agreement after receipt of the award recipient's information.
- ◇ **Federal notice requirements apply to all purchases involving CDBG or HOME funds, including homeownership purchase assistance programs.**

c. Voluntary Acquisition of Government Property

- ◇ Acquisitions are considered arms length voluntary transactions if the property in question is owned by Federal, State, or local government and the award recipient does not have authority to acquire property by the power of eminent domain.

d. Donations

- ◇ Owners may offer to donate properties, and these transactions would be considered voluntary. But the owners must be informed of their rights under URA, AND they must waive these rights in a written consent document.

2. INVOLUNTARY ACQUISITION TRANSACTIONS - If a project involves involuntary acquisition, contact IHFA for more detailed information.

In general, award recipients must:

- ◇ Notify owners of the agency's intentions and owner and tenants of their rights;
- ◇ Conduct an appraisal of the property in order to determine its fair market value;
- ◇ Offer just compensation for the property being acquired; AND
- ◇ Make every reasonable effort to complete the property transaction expeditiously.
- ◇ There are two key notices that award recipients may need to issue for an involuntary acquisition:

a. The Notice of Interest (or Notice of Intent to Acquire)

- ◇ The Notice of Interest should be issued as soon as feasible, following agency identification of real estate property in which it has an interest.

- This notice of interest must outline the protections available to the owner and should include information on the award recipient's process and obligation in conducting an appraisal.
- To avoid triggering eligibility for relocation assistance at this time, the notice must tell owners and occupants not to move out and stress that the notice is not an intent to acquire, but only a preliminary statement of interest.
- The owner must be given a copy of HUD brochure entitled *When a Public Agency Acquires Your Property* (Form HUD-1041-CPD), which explains URA policies.

b. Notice of Just Compensation

- ◇ After an appraisal determines the market value of the property, award recipients should promptly deliver a Notice of Just Compensation to the owners which offer them the full value of just compensation.
 - It is the delivery of this notice that constitutes the initiation of negotiations for relocation assistance related to this purchase.
- The offer must include:
- A statement of the just value of compensation;
 - A description of the property to be acquired; AND
 - Identification of the buildings that are considered a part of this structure.

Although Federal law does not require it, the owners may also be given a copy of the appraisal report

Section 104(d) Relocation Requirements

- ◇ These requirements apply when, through a CDBG- or HOME-assisted development, there is a loss of affordable, low-income housing (either rental or owner-occupied) in the community because of demolition or conversion.

Section 104(d) has two distinct components that must be considered separately:

- ◇ PEOPLE: Section 104(d) specifies relocation assistance for displaced low or moderate-income households. Section 104(d) does not provide protection or assistance for high-income households (however, these high-income households would be eligible for URA assistance).
- ◇ UNITS: Section 104(d) requires one-for-one replacement of low/mod dwelling units that are demolished or converted to other uses.

A. *Key Definitions for Section 104(d)*

- ◇ *Conversion* -
 - Changing the use of the unit (e.g., from permanent rental housing to a hotel or to a non-residential use), and/or

- Rehabilitating a low/mod unit with HOME or CDBG assistance causing the post rehab rent to be above the Section 8 Fair Market Rent (FMR). (If rent increases, but does not exceed the FMR, then the household may be eligible for URA, but not Section 104(d).)
- Conversion does not occur if the sole development activity is acquisition. However, if HOME or CDBG funds are used for any development activity (i.e. acquisition but not the subsequently planned rehabilitation), the entire development is considered to be funded with HOME or CDBG funds.

◇ *Demolition -*

- Any unit occupied by a low or moderate income resident that is demolished with HOME or CDBG funds triggers the requirement to provide relocation assistance to the occupant at Section 104(d) levels.
- Whether or not a demolished unit must be replaced depends upon its condition and how long it has been vacant prior to demolition. (More details are provided in the One-For-One Replacement section).

◇ *Low/Mod Unit -*

- A low/mod unit is a housing unit that has a market rent (including estimated tenant-paid utilities) that is equal to or below the Section 8 Fair Market Rent.
- The determination of a low/mod unit is **not based upon the income of the occupant.** For example, a unit that rents above the FMR that is occupied by a low or moderate-income tenant is NOT a low/mod unit. But a unit that rents below the FMR that is occupied by a high-income person IS a low/mod unit.
- To determine whether an owner-occupied unit is a low/mod unit, consider the "market rent" for the unit based upon the rents for comparable units that are being rented. *Market Rent -*
 - Rent (including estimated tenant-paid utilities) charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or on-site manager is not market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

◇ *Section 8 Fair Market Rents (FMRs) -*

- FMRs are determined by HUD and are published annually in the Federal Register. They are published by bedroom size for individual market areas.
- FMR's are intended to represent a figure at or below which modest, decent, safe, and sanitary housing (including the cost of utilities) can be rented on the private market (approximately the 45th percentile of standard housing occupied by people who have moved within the last two years).

◇ *Vacant Occupiable Dwelling Unit -*

- A dwelling unit in standard condition (regardless of how long it has been vacant); OR
- A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); OR
- A dilapidated unit, not suitable for rehabilitation which has been occupied (except by squatters) within one year from the before the date of agreement.

B. Section 104(d) Tenant Assistance and Relocation Requirements

- ◇ Whenever:
 - Any unit, at any rent level that is occupied by a low or moderate-income person is **demolished** with HOME or CDBG funds; the displaced person is eligible for relocation assistance at the Section 104(d) levels.
 - A HOME or CDBG funded **conversion** displaces a low or moderate-income person; the displaced person is eligible for relocation assistance at Section 104(d) levels.
 - A low or moderate-income person remains in a development **converted** with HOME or CDBG funds, Section 104(d) economic displacement rules apply.
 - ◇ Any displaced person who qualifies for Section 104(d) assistance is also covered by URA.
 - ◇ High-income residents of a HOME or CDBG funded development who are displaced (physically or economically) are not eligible for Section 104(d) assistance but are eligible for URA assistance.
1. SECTION 104(d) REPLACEMENT HOUSING PAYMENT
- ◇ The Section 104(d) Replacement Housing Payment is available only to Low and Moderate-Income households; however, high income displaced tenants are eligible to receive assistance under the URA.
 - ◇ The Section 104(d) Replacement Housing Payment is intended to provide affordable housing for a 60-month period. There is no cap on the Section 104(d) Replacement Housing Payment.
 - ◇ For homeowners who are displaced and who qualify for Section 104(d), use the market rent of the comparable and replacement units in this calculation.
 - ◇ **Be sure to compare the Section 104(d) calculation to the amount that they would receive under the URA formula. If the amount calculated under the URA formula exceeds the amount under the Section 104(d) formula, then the displaced household is entitled to the URA amount.**
 - ◇ Provide homeowners with a copy of HUD booklet 1365-CPD *Relocation Assistance Under Section 104(d) to Persons Displaced From Their Homes*.

C. Section 104(d) One--For-One Replacement Requirements

- ◇ Award recipients may not use CDBG or HOME dollars to reduce the supply of "low/moderate dwelling units."
- ◇ Section 104(d) requires that each applicable low/mod unit that is "lost" through conversion or demolition in conjunction with a CDBG or HOME assisted development be replaced by another affordable unit.
- ◇ This is a bricks and mortar requirement. It is not related to the circumstances of the household who lives in the unit, nor whether the unit is currently owned or rented.
- ◇ Award recipients MUST replace a unit if:
 - It meets the definition of a low/mod dwelling unit; **AND**
 - It is occupied or is a vacant occupiable dwelling unit; **AND**
 - It is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing.
- ◇ A unit DOES NOT need to be replaced if:
 - It does not meet **all** of the triggering criteria.
 - It is a substandard unit not suitable for rehabilitation (as defined by local minimum housing standards or the State Consolidated Plan) that has been vacant for over a year.
- ◇ Income of the current resident is not relevant when evaluating triggers for replacement.

1. DISCLOSURE AND REPORTING REQUIREMENTS

- ◇ Before a award recipient executes a contract for any activity that would create the need for one-for-one replacement, the award recipient must:
 - Make the plan public, by publication in a newspaper of general circulation, and
 - Submit to IHFA the following information:
 - Description of the proposed activity;
 - Location and number of units to be removed;
 - Schedule for the beginning and completion of the demolition or conversion;
 - Location and number of replacement units;
 - Source of funding and timing for providing the replacement units;
 - The award recipient's basis for determining that the replacement units will remain affordable for at least 10 years from the initial date of occupancy; and
 - The award recipient's justification (if applicable) for replacing larger units with smaller units.
- ◇ There will be no formal IHFA approval of the submission. IHFA will forward the information to HUD and both agencies will use it during their monitoring activities.

2. REPLACEMENT UNITS

- ◇ Replacement units must be:
 - Within the award recipient's jurisdiction and, if possible, consistent with other statutory priorities, in the same neighborhood;
 - In standard condition; AND
 - Designed to remain affordable to low-income families for 10 years.
- ◇ The number of bedrooms replaced must equal the number of bedrooms removed (but not necessarily in the same unit configurations).
- ◇ Larger units may not be replaced with smaller units unless the award recipient can demonstrate that the replacement is consistent with the housing need of low or moderate-income households in the jurisdiction.
- ◇ Example: A jurisdiction might show that the need for one-bedroom units as shown in the local comprehensive plan or housing plan greatly exceeds the need for two-bedroom units.
- ◇ Replacement units must be provided within a **four-year time frame**.
 - Units made available up to one year before the submission of the award recipient's plan for a one-for-one replacement may be counted as replacement units.
 - Units made available within three years after the beginning of the demolition or rehabilitation can be counted as replacement units.
- ◇ Substandard units that are rehabilitated can count toward the replacement unit if:
 - No person was displaced by the assisted activity; AND
 - The unit was vacant for at least three months before the agreement authorizing the rehabilitation; AND
 - The unit is in standard condition following rehabilitation.

URA and Section 104(d): Similarities

Both URA and Section 104(d) provide assistance for persons who have been displaced as a direct result of CDBG and/or HOME assisted developments.. Specific similarities between the two sets of regulations include:

- ◇ ***Minimizing displacement*** - Both regulations stress that displacement should be minimized when possible.
- ◇ ***Notices*** - Both require that a General Information Notice, and a Notice of Non-Displacement or a Notice of Eligibility for Relocation Benefits be provided.
- ◇ ***Economic displacement*** - both regulations consider people who cannot afford to remain in the property after completion to be economically displaced.

- ◇ ***Relocation assistance and procedures***
 - Moving expenses are the same under the two sets of regulations.
 - Both require payments of rental assistance, although the amounts and available types vary across the two regulations.
 - Both permit offering Section 8 to eligible families who will remain in the development to avoid economic displacement. And, as with URA, "gap" payments may be required in some cases.
 - Section 104(d) and URA require that displaced tenants be offered comparable dwelling units that are decent, safe, and sanitary.
 - Advisory services are required under both Section 104(d) and URA.
 - Appeals are provided for under both sets of requirements.
- ◇ ***Award recipient responsibility and records*** - Award recipients are responsible for ensuring subrecipient compliance with both Section 104(d) and URA and keeping adequate records.

Relocation Definitions

Advisory Services - Includes timely notices, information booklets, explanation of assistance, referrals to comparable housing, referrals to social services, counseling, and advice on rights under the Fair Housing Act.

Affordable Rent (CDBG) - is rent plus utilities that does not exceed 30% of a household's gross monthly income.

Affordable Rent (HOME) -

- ◇ For households with gross incomes greater than 80% of the area median income, rent and utilities that do not exceed 30% of the household's gross monthly income is considered affordable.
- ◇ For households with gross incomes less than 80% of the area median income, rent and utilities cannot exceed the amount calculated for the Section 8 Total Tenant Payment (TTP) level to be considered affordable.

Comparable - Tenants who are displaced must be referred to at least one comparable replacement unit.

- ◇ Comparables are used to:
 - Assure that displaced persons actually have a place to go, and
 - Set a limit on the maximum liability for the agency for replacement housing payments because the replacement housing payment is based upon the lesser of the cost of the household's replacement unit or the cost of the comparable unit.
- ◇ Generally, "comparable" units must be:
 - Similar in size
Generally, comparable units will have the same amount of space as the original unit. Sites should be typical in size for residential development with normal site improvements.

NOTE: If the original unit was dilapidated, a smaller, decent, safe, and sanitary unit adequate in size to accommodate the household may be considered comparable. If a household is found in an overcrowded unit, however, the comparable must alleviate the overcrowding.

-- Similar in function

The unit performs the same function, service, or purpose as the displacement unit and contains the same principle features.

-- Reasonably accessible to the person's employment

-- Located in equal to or better area than the displacement unit vis-a-vis public utilities and commercial and public facilities. The location should be no less desirable than the displacement location and provide access to work, services, and facilities. Comparable units may not be in areas subject to unreasonable, adverse environmental conditions.

-- Currently available to the displaced person. Units are "available" if:

The person has been informed of the location; has sufficient time to negotiate an agreement to lease or purchase; and receives relocation payments (as necessary) in sufficient time to complete the move or purchase.

-- Decent, safe, and sanitary (See definition)

-- Within the financial means of the displaced person.

Note: Because URA requires that financial assistance be provided to assist the household to afford the replacement unit, the unit selected, as the comparable is not required to be affordable by the family without assistance.

◇ The type of rental property affects whether it is considered comparable.

-- Public housing is a suitable comparable unit for displaced public housing tenants, but not for other tenants.

-- Project based subsidized housing (e.g., Section 8 or Section 236 developments) is an acceptable comparable for displaced public housing tenants as well as those who lived in such projects before being displaced.

-- A privately owned unit made affordable by a tenant-based subsidy (e.g., Section 8 Rental Certificates) is an acceptable comparable for displaced person who previously lived in a unit with a project-based subsidy.

-- Affordable privately owned housing is an acceptable comparable for any tenant.

Conversion -

◇ Changing the use of the unit (e.g., from permanent rental housing to a hotel or to a non-residential use).

◇ Rehabilitating a low/mod unit with HOME or CDBG assistance causing the post rehab rent to be above the FMR (If rent increases, but does not exceed the FMR, then the household may be eligible for URA, but not Section 104(d)).

◇ Conversion does not occur if the sole development activity is acquisition. However, if HOME or CDBG funds are used for any development activity (i.e., acquisition but not the subsequently planned rehabilitation), the entire development is considered to be funded with HOME or CDBG funds.

Decent, Safe, and Sanitary Units must:

◇ Be structurally sound, weather-tight, and in good repair;

- ◇ Include wiring that is safe and adequate for lighting and other devices;
- ◇ Contain a heating system capable of sustaining a healthful temperature;
- ◇ Be adequate in size for the household including:
 - Separate, well-ventilated bath with sink, bathtub or shower, and toilet in good working order and properly connected;
 - A kitchen area with sink, potable water, sewage drainage, and space and connections for stove and refrigerator; and
 - Unobstructed access to safe, open space at ground level.
- ◇ For a person with mobility impairments, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling; and
- ◇ Comply with the lead-based paint requirements of 24 CFR Part 35 (i.e., no cracking, peeling, chipping, scaling paint, and provide lead-based paint notice if children under seven (7) years of age will occupy the unit).
- ◇ For programs covered by the Section 8 Housing Quality Standards (HQS), units that meet HQS are considered "decent, safe, and sanitary" replacement units.
- ◇ Qualified persons who are knowledgeable of the local housing code must inspect units.

Demolition -

- ◇ Any unit occupied by a lower income resident that is demolished with HOME or CDBG funds triggers the requirement to provide relocation assistance to the occupant at Section 104(d) levels.
- ◇ Whether or not a demolished unit must be replaced depends upon its condition and how long it has been vacant prior to demolition (see One for One Replacement section).

Displacement - occurs when a person (or their property) permanently moves as a direct result of a federally assisted acquisition, demolition, or rehabilitation activity. A direct result includes the following:

- ◇ The person is required to move from the property (e.g., because the family size cannot be accommodated after rehabilitation, the unit is demolished or its use is changed, or the family's lease is not renewed).
- ◇ The person leaves the property because a decent, safe, and sanitary and affordable unit in the property was not offered.
- ◇ The person leaves the property because of unreasonable temporary relocation requirements or unreasonable terms for permanent moves within the property.
- ◇ The person leaves for whatever reasons, AND the necessary notices to assure that the person was fully informed about relocation rights and assistance were not given or were not given in a timely fashion.
- ◇ The person leaves the property because the landlord did not renew their lease in order to avoid displacement.
- ◇ The landlord forces tenants to move in order to provide a "vacant" property for CDBG or HOME assistance.

Displacement does not include persons who:

- ◇ Were evicted for cause, BUT not if the eviction is taken to evade paying relocation assistance.

- ◇ Have no legal right to occupy the property (e.g. persons that meet the definition of squatters under local law).
- ◇ Before leasing and occupying the property, but after application for development funding, receive written notice of the possibility that displacement or an increase in rent may occur and that relocation assistance will not be provided.
- ◇ Retain the right of use and occupancy of the property following acquisition (life estates).
- ◇ After being fully informed of their rights, waive them.
- ◇ The award recipient decides (and HUD agrees in writing) were not displaced as a direct result of the development (professional relocatees).
- ◇ Were required to move out for a short period to facilitate emergency repairs, as long as certain conditions are met (see Temporary Relocation).

Economic Displacement - Applies to tenants who are intended to remain in the development after rehabilitation. If a tenant's rent increases as a result of the development and the increased rent and utilities is greater than the household's affordable rent level, then the household must be considered "economically displaced". The award recipient must treat this household like any other displaced household, by issuing a "Notice of Eligibility" and providing relocation assistance.

General Information Notice (GIN) - Informs all occupants of a possible development and of their rights under the URA. Stresses that the household should not move at this time.

HUD-assisted - Any development that involves Community Development Block Award (CDBG) or HOME Investment Partnership Program (HOME) funds awarded through the Indiana Housing Finance Authority (IHFA).

Involuntary Acquisition - The use of eminent domain to acquire a property.

Low and Moderate Income - Households that have a gross annual income that is below 80% of the area median income. HUD annually publishes a table of low and moderate incomes by area and household size.

Low/Mod Unit -

- ◇ A low/mod unit is a housing unit that has a market rent (including estimated tenant-paid utilities) that is equal to or below the Section 8 Fair Market Rent.
- ◇ The determination of a low/mod unit is **not based upon the income of the occupant**. For example, a unit that rents above the FMR that is occupied by a low or moderate-income tenant is NOT a low/mod unit. But a unit that rents below the FMR that is occupied by a high-income person IS a low/mod unit.
- ◇ To determine whether an owner-occupied unit is a low/mod unit, consider the "market rent" for the unit based upon the rents for comparable units that are being rented.

Market Rent - Rent charged for an unsubsidized comparable unit. Generally, this is what a tenant pays. A reduced rent charged to a relative or on-site manager is **not** market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented.

Move-in Notice - Informs households moving into potential projects after the application that they may be displaced and that they will not be entitled to assistance.

Moving and Related Expenses - In addition to the Replacement Housing Payment, the displaced person has the option of:

- ◇ A payment for actual, out-of pocket, reasonable moving and related expenses; or
- ◇ A fixed moving expense allowance based on a Department of Transportation (DOT) schedule that is published periodically (available from IHFA).

90-Day Notice - Informs displaced households of the day by which they must vacate the property. Displaced households may not normally be given less than 90 days to vacate their residence.

Notice of Eligibility - Informs households to be displaced of their rights and levels of assistance under the URA. Information on comparable units must be included with this notice.

Notice of Non-Displacement - Informs households who will remain in the project after completion of the assisted activity of their rights and of the terms and conditions of their remaining at the property.

Development- An activity or series of activities that are integrally related, each essential to the other, whether or not all components receive federal financial assistance. If federal funds are used in any activity, the entire development is considered a federally assisted development.

Referral Unit - Other appropriate (but not necessarily comparable) housing which is suggested to the household as part of advisory services.

Replacement Housing Payment (RHP) - Replacement housing assistance is available to both renters and homeowners.

- ◇ Assistance is provided in the form of either rental assistance or purchase assistance.
- ◇ Rental Assistance may be in the form of a Replacement Housing Payment or, for eligible households, Section 8 tenant-based rental assistance if it is available. The household (not the award recipient) has the right to choose whether rental assistance is provided through a Replacement Housing Payment or through tenant-based rental assistance for URA relocation. Under Section 104(d) requirements, the award recipient (not the tenant) decides whether tenant-based rental assistance or a replacement housing payment will be made. However, if the household wants a cash payment and therefore rejects an offer of tenant-based rental assistance under Section 104(d), the household retains its right to a cash payment (42 months) under URA.
- ◇ Replacement Housing Payments must be made in installments unless the tenant wishes to purchase a home. If the tenant wishes to purchase, the full amount of the payment must be paid in lump sum and attributed to the purchase cost of the home. Under Section 104(d), cash purchase assistance can only be used to buy a co-operative unit or for mutual housing. If the displaced tenant wishes to purchase other than a co-operative unit or mutual housing unit, replacement housing benefits may be calculated using the URA formula and paid in one lump sum. The household may then use the URA assistance to buy any type of unit.

Replacement Housing Payment Calculation for URA (180-Day Homeowner)

- ◇ A displaced homeowner who has owned and occupied the property for at least 180 days immediately before the initiation of negotiations is eligible for a replacement housing payment.

- ◇ The payment includes the difference between:
 - the cost of a replacement dwelling (lesser of the comparable and actual), and
 - the acquisition price of the displacement unit.
- ◇ The payment also includes:
 - any additional mortgage financing costs, and
 - reasonable expenses incidental to the purchase.

EXAMPLE: URA Replacement Housing Payment - 180 - Day Homeowner

Price of actual replacement dwelling	= \$60,000	
Price of comparable replacement dwelling	= \$55,000	
Choose the lesser:	\$55,000	
Acquisition price of displacement dwelling	= \$25,000	
Difference: \$55,000 - \$25,000	= \$30,000	
Increased financing costs	= \$ 1,000	
Incidental costs	= \$ 1,000	
Replacement Housing Payment	\$32,000	[To be provided in a lump sum to be applied to purchase price.]

Replacement Housing Payment Calculation for URA (90-179-Day Homeowner) - Receive the same assistance as a displaced rental tenant, except this owner can never receive more than a 180-Day homeowner would receive.

Replacement Housing Payment Calculation for URA (Rental Tenants) -

Assistance for Tenants in Occupancy
More than 90 Days

Replacement Housing Payment makes up (for a 42 month period) the **difference between:**

The **lesser** of rent and estimated utility costs for the replacement dwelling or comparable unit; and

The **lesser** of:

- (a) 30% of the tenant's average monthly gross income; or
- (b) the monthly rent and estimated average utility costs of the displacement dwelling; or
- (c) the welfare rent (in as-paid welfare states only)

Assistance for Tenants in Occupancy
Less than 90 Days

Replacement Housing Payment makes up (for a 42 month period) the **difference between:**

The **lesser** of rent and estimated utility costs for the replacement dwelling or comparable unit and;

30% of the tenant's average monthly gross income

EXAMPLE: URA Replacement Housing Payment - Rental Tenant

\$600 Rent and utilities at actual replacement dwelling

\$500 Rent and utilities at comparable replacement dwelling

Choose the lesser: \$500

\$400 Rent and utilities at the displacement dwelling

\$300 30% of gross monthly income

Choose the lesser: \$300

Replacement Housing Payment is

$\$500 - \$300 = \$200 \times 42 \text{ months} = \$8,400$

[To be paid in installments, or in a lump sum if used for a downpayment.]

Replacement Housing Payment Calculation for Section 104(d) -

- ◇ As with URA, the payment is calculated using the lower of the cost of the tenant's replacement dwelling (including utilities) or a comparable replacement dwelling.
- ◇ The Replacement Housing Payment makes up (for a 60 month period) the difference between:
 - The **lesser** of the rent and utility costs for the replacement dwelling or comparable unit, and
 - The tenant's Total Tenant Payment (TTP), calculated as the **greater** of:
 - 30% of adjusted income; or
 - 10% of gross income; or
 - Welfare Rent (in as-paid states only)

Be sure to compare the Section 104(d) calculation to the amount that they would receive under the URA formula. If the amount calculated under the URA formula exceeds the amount under the Section 104(d) formula, then the displaced household is entitled to the URA amount.

EXAMPLE: Section 104(d) Replacement Housing Payment

\$500	Replacement Unit Rent	\$20,000	Annual Income
\$ 50	Estimated Average Utilities	\$ 1,440	Adjustment (480 x 3)
\$550	Replacement Unit Gross Rent	\$18,560	Adjusted Income
\$490	Comparable Unit Rent	$\$20,000 / 12 \text{ months} \times .10 = \167	
\$ 50	Estimated Average Utilities	$\$18,560 / 12 \text{ months} \times .30 = \464	
\$540	Comparable Unit Gross Rent	Welfare Rent	N/A
		TTP = \$464	

Replacement Housing Payment:

	\$ 540	Comparable Unit Gross Rent
minus	\$ 464	Total Tenant Payment (TTP)
	\$ 76	Monthly Difference
	x 60	Months
	\$4,560	<i>Replacement Housing Payment [To be paid in installments, or in lump sum if used for a downpayment (some restriction apply, see definition of replacement housing payment).]</i>

Replacement Unit - The unit to which the household actually moves.

Section 8 Fair Market Rents (FMRs) -

- ◇ FMRs are determined by HUD and are published annually in the Federal Register. They are published by bedroom size for individual market areas.
- ◇ They are intended to represent a figure at or below which modest, decent, safe, and sanitary housing (including the cost of utilities) can be rented on the private market (approximately the 45th percentile of standard housing occupied by people who have moved within the last two years).

Temporary Relocation -

- ◇ Residents who will remain in the development after rehabilitation may be required to move temporarily during rehabilitation.
- ◇ The temporary dwelling must be suitable and decent, safe, and sanitary - but not necessarily comparable. All other conditions of the move must be "reasonable".
- ◇ In addition to the Notice of Nondisplacement discussed earlier, the resident must, at a minimum, receive:
 - Reasonable advance written notice of the date and approximate duration of the planned temporary move.
 - Information about the terms and conditions under which the tenant will be returning to the unit when the development is completed.
 - Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary move including any increase in monthly rent/utility cost. (No claim form has been developed by HUD, but adequate documentation for reimbursements should be retained in award recipient files.)

Temporary Relocation Notice - Informs households who will be temporarily relocated of their rights and of the conditions of their temporary move.

Total Tenant Payment (TTP) - is the greater of:

- ◇ 30% of adjusted income;
- ◇ 10% of gross monthly income; or
- ◇ Welfare Rent (in as-paid states only)

Vacant Occupiable Dwelling Unit -

- ◇ A dwelling unit in standard condition (regardless of how long it has been vacant); or
- ◇ A vacant unit in substandard condition that is suitable for rehabilitation (regardless, how long it has been vacant); or
- ◇ A dilapidated unit, not suitable for rehabilitation which has been occupied (except by squatters) within one year from before the date of agreement.

Voluntary Acquisition -

- ◇ In general, URA recognizes these potential types of voluntary transactions:
 - Purchases where the award recipient can exercise the power of eminent domain but agrees in writing not to do so.
 - Purchases where the award recipient does not have the power of eminent domain.
 - Purchases of property from government agencies (Federal, State, or local) if the purchasing award recipient does not have the power of condemnation.
 - Donations where the owner is informed of their rights under URA and waives these rights in a written consent document.

Record Keeping System

Good record keeping is essential. Sample forms are provided in Exhibits A-Q to assist in record keeping and managing the development workload. All records must be retained at least three years after all displaced persons and all property owners have received the final payment to which they are entitled, or the date the development is completed, whichever is latest.

Relocation - The following record keeping system must be established and maintained for each displaced person (household or business).

- ◇ Establish a separate file for each tenant displaced.
- ◇ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◇ Copies of all notices and evidence of tenant receipt, including date of their receipt.
- ◇ Demographic information (e.g., name, address, sex, race, income, disability status, female-headed household, etc.).
- ◇ Description of relocation needs and preferences.
- ◇ Description of comparable replacement dwellings, including monthly housing cost, number of rooms, census tract location, etc.
- ◇ List of all referrals made, including date, address, and price. If refused, indicate reason for refusal.
- ◇ Comparable replacement dwelling on-site description, including:
 - date of relocation

- address and census tract of dwelling
- monthly housing cost
- socioeconomic neighborhood information
- ◇ Inspection reports of comparable replacement dwellings.
- ◇ Payment type(s) and amount(s) and evidence, including date(s) of payment(s).
- ◇ Copies of any appeals and records of the outcomes.
- ◇ All relevant correspondence.

Involuntary Acquisition

The following record keeping system is required for the involuntary acquisition of real property.

- ◇ A separate case file established for each property when an owner is initially contacted.
- ◇ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◇ A list identifying all parcels to be acquired for the development.
- ◇ For each parcel acquired, the files should include:
 - Identification of property and property owner(s);
 - Evidence that the owner was informed on a timely basis about the acquisition and his/her rights;
 - Copy of appraisal reports, and evidence the owner was invited to accompany each appraiser on the inspection of the property;
 - Copy of the written purchase offer and date of delivery to the owner;
 - Copy of the purchase contract and documents conveying the property;
 - Copy of closing statement identifying any incidental expenses;
 - Evidence the owner received payment and appropriate documentation if payment differed from offer of just compensation; and
 - Copy of any appeal or complaint filed with the award recipient and the award recipient's response.

Voluntary Acquisition

The following record keeping system is required for the voluntary acquisition of real property.

- ◇ A separate case file established for each property when an owner is initially contacted.
- ◇ Completed copy of Acquisition / Relocation Summary Form for each property (Exhibit A).
- ◇ A list identifying all parcels to be acquired for the development.
- ◇ For each parcel acquired, the files should include:
 - Identification of property and property owner(s); and
 - Evidence that the owner was informed on a timely basis: of his/her rights; that the acquisition would not involve the use of eminent domain; and of the fair market value of the property in question.

URA & Section 104(d) Requirement Exhibits

- A Acquisition/Relocation Summary Form
- B General Information Notice - Residential Tenant That Will Not Be Displaced
- C General Information Notice - Residential Tenant To Be Displaced
- D Notice - Non-Displacement To Residential Tenant
- E Notice - Eligibility for Relocation Assistance (180 Day Homeowner)
- F Notice - Eligibility for Relocation Assistance (Residential Tenant)
- G Notice - Eligibility for Section 104(d) Relocation Assistance (Section 8 Assistance Available)
- H Notice - Eligibility for Section 104 (d) Relocation Assistance (Section 8 Assistance Not Available)
- I Notice - Voluntary Acquisition Disclosure to Seller
- J HUD Form 40061 - Selection of Most Representative Comparable Replacement Dwelling
- K Site Occupant Record - Residential
- L Residential Relocation Management Report
- M Record of Advisory Assistance and Other Contacts
- N Claim for Moving and Related Expenses
- O Claim for Replacement Housing Payment for 180-Day Homeowner
- P Claim for Rental Assistance or Downpayment Assistance
- Q Claim for Rental or Purchase Assistance - Under Section 104(d)
- R Residential Moving Expense and Dislocation Allowance Schedule
- S Guideform Notice to Prospective Tenant